

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

SSGT. JASON A. ADKINS, USAF,)	C.A. NO.: 04-1453-JJF
)	
Plaintiff,)	
)	
v.)	
)	
DONALD H. RUMSFELD, Secretary of Defense;)	DEFENDANTS' MOTION FOR
JAMES G. ROCHE, Secretary of the Air Force;)	A PRIVACY ACT PROTECTIVE
GEN. JOHN W. HANDY, Commander Air Mobility)	ORDER AND FOR PERMISSION
Command; COL. JOHN I. PRAY, JR., 436th Airlift)	TO FILE FOUR EXHIBITS
Wing Commander, in their official capacities,)	IN SUPPORT OF DEFENDANTS'
)	MOTION TO DISMISS
Defendants.)	UNDER SEAL

Pursuant to Fed. R. Civ. P. 26(c) and the Privacy Act of 1974, 5 U.S.C. § 552a(b)(11), defendants, through undersigned counsel, hereby move this Court to authorize the filing under seal of certain records and to adopt the attached proposed Protective Order so as to permit the use in this case of these records and information contained in them that may be Privacy Act-protected and/or otherwise might intrude upon the privacy interests of present or former government employees. Undersigned counsel has sought plaintiff's consent to this motion. Plaintiff opposes this motion.

1. In support of defendants' motion to dismiss, to be filed on January 18, 2006, defendants intend to file certain exhibits that are subject to the Privacy Act. Specifically, defendants intend to file three documents contained in plaintiff's official personnel file and one record obtained from the Inspector General of the Air Force.¹

¹In conformity with the guidance provided by the Court for CM/ECF filings involving sealed exhibits, see Electronic Filing Tips for Attorneys (located on the Court's website at

2. The Privacy Act permits defendant to utilize such records pursuant to a court order. See 5 U.S.C. § 522a(b)(11).

3. Fed. R. Civ. P. 26(c) permits the court, for good cause shown, to "make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense," including "that . . . the disclosure . . . may be had only on specified terms and conditions."

4. It is the burden of the party seeking an order to file documents under seal to overcome the presumption of public access to judicial records in civil cases. See Leucadia v. Applied Extrusion Technologies, 998 F.2d 157, 165 (3d Cir. 1993).

5. Prompt entry of an order authorizing the filing of these records under seal and adopting the attached protective order will further these interests. These records contain Privacy Act-protected materials regarding both plaintiff and third parties that are not readily susceptible to redaction or other measures of partial protection of this information. The public's presumptive right of access to all materials filed in a civil case is outweighed by the inherently private nature of these materials, the privacy interests of third parties, and the continued public access to the vast majority of materials filed in this case, including references and citations to all filed exhibits in defendants' memorandum of law in support of defendants' motion to dismiss.

<http://www.ded.uscourts.gov/CMECF/CMECFMain.htm>), defendants will file a single page noting just the words "Sealed Document" in lieu of these four exhibits. Defendants will also serve these exhibits on plaintiff's counsel via First-Class U.S. Mail, postage prepaid. Should the Court grant permission to file under seal, defendants' will comply with the instructions for doing so provided in this Court's Order, In re: Electronic Case Filing Policies and Procedures, Feb. 8, 2005. Should the Court deny permission to file under seal, defendants will file these exhibits electronically under the appropriate docket notation and reference.

Dated: January 18, 2006

Respectfully submitted,

Of Counsel:

LT COL DONNA MARIE VERCHIO
Staff Judge Advocate
Dover Air Force Base
MAJ CHARLES D. MUSSELMAN, JR.
Military Personnel Branch
General Litigation Division
Air Force Legal Services Agency

PETER D. KEISLER
Assistant Attorney General

COLM F. CONNOLLY
United States Attorney
RUDOLPH CONTRERAS
Assistant United States Attorney
Chief, Civil Division

VINCENT M. GARVEY
Deputy Branch Director


JEFFREY D. KAHN (MI Bar # P65270)
Trial Attorney, Federal Programs Branch
Civil Division, U.S. Department of Justice
P.O. Box 883, 20 Massachusetts Ave., N.W.
Washington, D.C. 20044
Tel: (202) 514-3716
Fax: (202) 616-8470
jeffrey.kahn@usdoj.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that on January 18, 2006, I electronically filed the foregoing Defendants' Motion for a Privacy Act Protective Order and for Permission to File Four Exhibits in Support of Defendants' Motion to Dismiss Under Seal with the Clerk of Court using CM/ECF which will send notification of such filing to the following:

Thomas S. Neuberger
Email: tsn@neubergerlaw.com

Stephen J. Neuberger
Email: SJN@NeubergerLaw.com



JEFFREY D. KAHN (MI # P65270)